IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6378 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BENABEN BHANABHAI & 10 - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MS VASUBEN P SHAH for Petitioner(s) : 1 - 11.
SERVED BY RPAD - (R) for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 10/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. By filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a

writ of certiorari or any other appropriate writ or direction to set aside order dated June 18, 1990 passed by the Special Land Acquisition Officer, Tapi Canal Scheme, “B” Branch, Surat by which the petitioner No. 1 i.e. Mrs. Benaben Bhanabhai is informed that the application dated February 2, 1990 made by her requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate amount of compensation payable to her, is not accepted as the same is time barred under Section 18 (2)of the Land Acquisition Act, 1894 (“the Act” for short) and is therefore ordered to be filed. The petitioners have also prayed to declare that the provisions contained in Section 18 (2) of the Act prescribing the period of limitation for making application for reference to the Court are ultra vires and unconstitutional, as they violate the fundamental rights of the petitioners guaranteed under Articles 14, 21 and 300-A of the Constitution.

2. The petitioners were the owners of lands bearing Survey No.701/1-2—3-4-7-8 and Survey No.705/1

admeasuring, in aggregate 14873 Sq. Mtrs. situated at village Ichhapore, Tal. Choryasi, District : Surat. It appeared to the appropriate Government that the lands of the petitioners and otherS were likely to be needed for the public purpose of Hajira Fertilizers Complex Township extension. Therefore, notification u/s 4 of the Act was published in the Government Gazette on March 17, 1983. Those who were interested in the lands had filed their objections. After consideration of the objections, the Special Land Acquisition Officer forwarded his report u/s 5-A (2) of the Act to the Government. The Government on consideration of the report was satisfied that the lands in question were needed for the public purpose of Hajira Fertilizers Township extension. Therefore, notification u/s 6 of the Act was published on September 20, 1983. Thereafter notices u/s 9 of the Act were served upon the petitioners in September, 1983. The notification issued u/s 6 of the Act by the Government was challenged by the petitioner No.1 and others by way of filing Special Civil application No. 5018 of 1983, wherein interim relief was granted restraining the respondents from interfering with

petitioners' possession of the lands. Meanwhile, the Special Land Acquisition Officer issued notice dated June 10, 1986 informing the petitioners that pursuant to the notice served u/s 9 of the Act, the date of hearing was fixed before him on June 30, 1986.

3. The case of the petitioners is that as they had challenged the notification issued u/s 6 of the Act dated September 20, 1983 in Special Civil Application No. 5018 of 1983, they did not remain present before the Special Land Acquisition Officer on the date of hearing specified by him. The Special Land Acquisition Officer made his award on August 20, 1986.

4. It is evident from the record of the case that the respondent No. 3 i.e. the Special Land Acquisition Officer served a notice dated October 10, 1986 u/s 12 (2) of the Act bringing to the notice of the petitoenrs the award passed by him and further informing that as there is interim relief operative against taking possession of the lands, after the final decision of the court and possession of the

land is taken over, the amount of compensation determined in the award would be paid to them. The High Court disposed of Special Civil application No. 5018 of 1983 and therefore the petitioners handed over the possession of the lands to the respondent No.3 on October 25, 1989.

5. The case of the petitioners is that they had accepted the amount of award under protest and therefore by a written application dated February 6, 1990 they requested the Special Land Acquisition Officer to refer the matter to the Court for determination of the appropriate amount of compensation payable to them. The petitioners have stated that the petitioners orally pointed out that a judgment of this Court and submitted that if there was any delay in filing the application u/s 18 of the Act, it may be condoned. But the Special Land Acquisition Officer has by his order dated June 10, 1990 has refused to make reference to the Court on the ground that the application requiring him to make reference to the Court was time barred. The petitioners have averred that the Special Land

Acquisition Officer, after condoning delay, should have made reference to the court to enable the court to determine appropriate amount of compensation payable to the petitioners, as the petitioners were not present when the award was made. In the alternative, the petitioners have asserted that the provisions contained in Section 18 (2) of the Act requiring the aggrieved party to make application for reference within the time specified therein, are violative of principles enshrined in Articles 14, 19, 300A of the Constitution. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which reference is made earlier.

6. Ms. Kalpana Brahambhatt learned counsel for the petitioners contended that neither the petitioners nor their representatives had remained present in the office of the respondent No. 3 on August 20, 1986 when the award was made by him and as the petitioners had not accepted the award, the prayer for reference made by the petitioners should have been accepted. It was argued that the period of limitation prescribed in Section 18 (2) of the Act commenced from the date

on which the petitioners obtained the certified copy of the award and therefore, the respondents were not justified in rejecting the prayer made by the petitioners to make reference to the Court to determine appropriate amount of compensation payable to them. In the alternative, it was argued that the provisions of Section 18 (2) of the Act prescribing the period of limitation for making application requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate amount of compensation payable to a claimant are violative of the fundamental rights guaranteed to the petitioners under Articles 14, 21, 300-A of the Constitution and therefore Section 18 (2) of the Act should be declared to be ultra vires the Constitution. The learned counsel for the petitioners emphasised that the period of limitation prescribed to alter or set aside any decision or the order of the Civil Court in any proceeding other than the suit or any act or order of an Officer of the Government in his official capacity is one year from the date of final decision of the order by the court or the date of the act or the order of the

officer as the case may be as provided in Article 100 of the Limitation Act, 1963 and therefore the legislature was not justified in prescribing the period of limitation less than one year for making application for reference to the court. It was asserted that the period of limitation prescribed under Section 18 of the Act for making application against the award of the Collector is not only unreasonable but shorter than the period prescribed under the Limitation Act, 1963 for initiating proceedings to challenge the order of an officer of the government and therefore Section 18 (2) of the Act should be struck down as violative of principles enshrined in Article 14 of the Constitution. It was argued that Section 18 (2) of the Act prescribing the period of limitation for making application requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of the appropriate amount of compensation has resulted into deprivation of right of the petitioners to get just compensation only on technical ground and therefore the same should be held to be ultra vires. The learned counsel for the petitioners emphasised that

refusal on the part of the the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate amount of compensation payable to the petitioners is arbitrary as well as unjust and therefore, the reliefs claimed in the petition should be granted to the petitioners.

7. Though the notice to the learned Attorney Journal has been served, neither he has appeared nor any other lawyer has appeared on his behalf. Mr. Mukesh A. Patel, learned A.G.P. appearing for the respondents No.2 and 3 contended that in view of the Full Bench decision of this Court in Memon Ibrahim Haji Latif Sukhediwala V. Officer on Special Duty (Land Acquisition) and Another,1994 (1) G.L.R. 296 and the decision of the Supreme Court in Officer on Special Duty (Land Acquisition) Vs. Shah Manilal Chandulal, (1996) 9 SCC 414, the Special Land Acquisition Officer was justified in not entertaining the application submitted by the petitioners requiring him to refer the matter to the Court for determination of appropriate amount of compensation payable to them as the same was time barred. It was

argued that the provisions enacted by the Legislature prescribing the period of limitation for making reference to the court are based on the principles of justice and equity and, therefore, the said provisions should not be regarded as violative of rights of the petitioners guaranteed under Articles 14, 21 and 300-A of the Constitution. It was emphasised by the learned A.G.P. for the respondents No.2 and 3 that the object of the law of limitation is to prevent the disturbances or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or latches and therefore the submission advanced on behalf of the petitioners, having no force, should not be accepted.

8. This Court has heard Ms. Kalpana Brahambhatt learned counsel for the petitioners and Mr. Mukesh A. Patel, learned A.G.P. for the respondents No.2 and 3 at length and in great detail as well as considered the documents forming part of the petition and relevant statutory provisions.

9. While dealing with the first prayer made by the petitioners that order dated June 18, 1990 passed by the Special Land Acquisition Officer informing the petitioner No. 1 that the application dated February 6, 1990 made by her requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of the amount of compensation is not accepted as the same is time barred, should be set aside, this Court is of the view that reference to Section 18 of the Act is necessary. Section 18 of the Act reads as under :

“Section 18 :- Reference Court – (1) Any person interested who has not accepted the award may, by written application to the Collector, are require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested

(2) The application shall state the grounds on which

objection to the award is taken :

Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of Collector's award, whichever period shall first expire“

10. A bare reading of above quoted provisions makes it more than clear that existence of an award is essential for making a reference under Section 18of the Act. A reference under Section 18 of the Act is limited to (i) measurement of the land, (ii) quantum, (iii) the persons to whom it is payable and (iv) the apportionment of compensation. Finality of award of the the Special Land Acquisition Officer can be questioned only by resorting to the provisions of Section 18 of the Act. Sub-Section (1) of Section 18

of the Act inter-alia provides that any person interested, but has not accepted the award, may by written application to the Collector, require that the matter be referred to the Collector for determination, with regard to his objection as to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation amongst the persons interested. As provided by Sub-Section (2) of Section 18 of the Act, the application has to state the grounds on which objection to the award is taken. What is important is that under proviso to Sub-Section (2) of Section 18 of the Act, application under Section 18 (1) of the Act has to be made within six months from the date of the Collector's award if the person making it was present or represented before the Collector at the time when the award was made and in other cases, within six weeks of the receipt of the notice from the Collector under Section 12 (2) or within six months from the date of the Collector's award, whichever period expires first.

11. At this stage, it would be advantageous to refer to the Full Bench decision of this Court in the case of Memon Ibrahim Haji Latif Sukhediwala (supra). In that case, the Full Bench has taken the view that the provision of Section 5 of the Limitation, Act, 1963 will apply only to applications to Courts and as the Collector under Section 18 of the Act discharges only administrative functions and not judicial functions and has no character of a Court, he has no power to condone the delay caused in making application for reference. What is ruled by the Full Bench of this Court is that if the Collector commits an error in making reference in that he has not adhered to the fulfillment of the conditions, the Court dealing with the reference can, still, examine it and throw out the reference , if it is found that the conditions have not been fulfilled.

12. Again in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, (1996) 9 SCC 414, the Supreme Court has authoritatively laid down the proposition of law that in view of the specific limitation

provided in proviso to Section 18 (2) of the Act, Sub-Section 2 of Section 29 of the Limitation Act, 1963, cannot be applied to the proviso to sub-section (2) of Section 18 of the Act and the Collector / Land Acquisition Officer who is not a court cannot condone the delay caused in making application for reference. It is relevant to notice that neither the Full Bench of this Court nor the Supreme Court has found that prescription of period of limitation for making application for reference is either arbitrary or violative of the provisions of the Constitution as is sought to be contended on behalf of the petitioners.

13. In Mahadeo Bajirao Patil V. State of Maharashtra, 2006 (1) G.L.H. 583, the lands were acquired. Notice u/s 12 (2) of the Act was served on the appellant after the award had been declared by the Special Land Acquisition Officer on August 29,1994. In the writ petition which was filed by the appellant, knowledge of the fact that the award was declared, was admitted, but it was asserted that the copy of the award had not been officially served

upon him. The application under Section 18 of the Act was made by the appellant on February 20, 1995, which was rejected as time barred. After review of law on the point the Supreme Court has held in paras 8, 9, 11, 12 and 14 of the reported decision as under :

“para 8 : A mere perusal of Section 18 discloses that there are three situations for which period of limitation has been provided for making an application for reference. Firstly, if the person making the application was present or represented before the Collector at the time when he made his award, the application must be filed within six weeks from the date of the Collector's award.”

“Para 9 – In the instant case, it is not disputed that the appellant was not present when the award was made and, therefore, Section 18(2)(a) is not applicable to the facts of this case.

“Para 10 – Second and third situations are envisaged by Section 18 (2) (b). The second situation envisaged is where a notice is received by the applicant under

Section 12 sub-section (2) of the Act. In such a case, the period of limitation prescribed is six weeks from the date of the receipt of the notice or within six months from the date of the Collector's award whichever period shall first expire. In the instant case, the High Court has held the application to be barred by limitation, firstly, on the ground that the telegram sent to the appellant on September 18, 1994 amounted to a notice under sub-section (2) of Section 12 of the Act, and secondly, on the ground that in any event as on December 9, 1994 the applicant had not only knowledge of the fact that an award has been declared but had also a copy of the award which he annexed with writ petition as exhibit B. If the date of knowledge is taken to be December 8,1994, even then the application under Section 18 was barred by limitation. The correctness of these findings has been assailed before us.

Para 11 : It is by now well settled that notice under Section 12(2) of the Act is a clear intimation of making of the award requiring the owner or person interested to receive the compensation awarded

under Section 11 of the Act. It is not necessary that the notice should contain all the details of the award including the consideration by the Land Acquisition Collector and its manner of determination of the compensation. No particular form is prescribed by the Act or the Rules."

"Para 12 : In State of Punjab and another V.Satinder Bir Singh this Court held :

"The question then is whether the notice under Section 12 (2) is a valid notice. From a conjoint reading of Sections 11 and 12, it is clear that notice is only an intimation of making of the award requiring the owner or person interested to receive compensation awarded under Section 11. On receipt of the notice, if the person interested receives compensation without protest, obviously no reference need be made. The determination of compensation becomes final and binds the parties. When he receives the compensation under protest as contemplated under Section 31 of the Act, the need to make the application for reference under Section 18 (1) would

arise. At that juncture, it will be open to the person interested either to make an inspection of the award which was conclusive between him and the Collector by operation of sub-section (1) of section 12, or seek a certified copy of the award from the Collector and the contents. Thereon he could make necessary objection for the determination, *inter alia,* of compensation for the land. It is not necessary that the notice should contain all the details of the award including his consideration and its manner of determination of the compensation as opined by the learned Judge of the High Court. It is not incumbent that the person interested should immediately make the reference application on his receiving compensation under Section 31. In other words receipt of the amount and making the reference application are not simultaneous. The statutory operation of limitation mentioned by Section 18(2) does not depend on the ministerial act of communication of notice in any particular form when the Act or Rules has not prescribed any form. The limitation begins to operate from the moment the notice under Section 12 (2) is received or as

envisaged by Section 18 (2).”

“Para 14 : We are here not concerned with the correctness of the decision, but the fact remains that having considered the claim of the appellant for compensation, the Special Land Acquisition Officer rejected the claim. This does amount to the making of an award, commonly described as 'nil award'. If the appellant was aggrieved by such an award, it was open to him to seek reference under Section 18 of the Act which the appellant actually did. We, therefore, cannot hold that no award as envisaged by Section 11 of the Act was declared on August 29, 1994, since the claim of the appellant was considered and was totally rejected. There was, therefore, no question of giving any calculation of the manner in which the compensation was computed. Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12 (2) of the act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference,

or the court considering a reference under Section 18 of the Act has no power of condonation of delay in making an application under the aforesaid section."

14. Applying the principles laid down in above mentioned decisions to the facts of the case, this Court finds that it is an admitted position that the award in this case was made by the Special Land Acquisition Officer on August 20, 1986. In paragraph 4 of the petition, the petitioners have admitted that the notice dated October 10, 1986 issued under Section 12 (2) of the Act was served on them. The application u/s 18 (1) of the Act, requiring the Special Land Acquisition Officer, to make reference to the Court was filed on February 6, 1990 i.e. not within six weeks of the receipt of the notice u/s 12 (2) of the Act as required by Clause (b) of the proviso to sub-section (2) of Section 18 of the act. Therefore, in view of the settled legal position the Special Land Acquisition Officer did not commit any error in refusing to refer the matter to the Court for determination of appropriate compensation payable to the petitioners because the application was time

barred and he had no power to condone the delay. Therefore, the first prayer made by the petitioners is liable to be refused and is hereby refused.

15. In so far as the prayer made by the petitioners to declare that the provisions contained in Section 18(2) of the act prescribing the period of limitation for making application for reference to the Court are ultra vires and unconstitutional as they are violative of fundamental rights of the petitioners guaranteed under Articles 14, 21 and 300-A of the Constitution, is concerned, this Court finds that while considering constitutional validity of the Statute said to be violative of Article 14 of the Constitution, it is necessary to bear in mind certain well established principles which have been evolved by the Court as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. Another principle is that

while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any statutory provision is assailed on the ground that it contravenes Articles 14, its validity can be sustained if two tests are satisfied; (i) that the classification must be founded on a intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question." In view of these principles, it would be relevant to notice the reasons and object for which Section 18(2) of the Act came to be enacted.

16. If one looks at the scheme envisaged by the Act it becomes at once clear that the validity of the acquisition itself is dependent upon due observance of the provisions of Sections, 4, 6, and 11A of the Act which are substantive in nature. As against these provisions, provisions contained in Sections 9, 11, 12, 15, 16, 17, 3, (3A), (3B), 17-A, 18, 19, 23, 24,

29, 31, 32-A, 34 and 50 which relate to determination and payment of compensation and interest thereon are subsidiary provisions. If the amount of compensation is not determined in accordance with the provisions of the Act, consequence is provided by the Act itself. The land holder has a right to apply for reference to the Court. The right to get the compensation is a statutory right conferred by Section 18 of the Act and can be exercised subject to the limitations provided therein.

17. At this stage, it would be relevant to notice the legislative history. Section 18 of the Land Acquisition Act, 1894, corresponds to Section 15 of the old Act X of 1870 and therein no period of limitation was prescribed for making application for reference. The old Act of 1870 was not, in practice, found entirely effective for the protection of either the persons interested in the lands acquired or of the public purse. The requirement of old Section 15 that the Collector should refer for the decision of the Court, every petty difference of opinion as to value, and every case in which any one or perhaps a

large number of persons failed to attend before him, had involved in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. Further, the provisions of the Act of 1870, as to incidence of costs, the whole of which fell on the Collector if the final award was ever so little in excess of the amount of his tender, were such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs was so great that the claimants were in the position of risking very little, in order to gain very much, and had, therefore, every motive to refuse even liberal offers made by the Collector and to try their luck by compelling a reference to the Court. Much the same can be said as to the provisions of the law then the existing regarding payment of interest. All these cost a very heavy and undeserved burden on the public purse. In order to overcome above-referred to difficulties, the Land Acquisition Act 1894 was enacted. The object of the act, inter-alia, is to amend the law for determining the amount of compensation to be paid on account of acquisition of

land needed for public purpose. Viewed in this light, the proviso to sub-section (2) of Section 18 of the Act, prescribing period of limitation, cannot be regarded as arbitrary or unreasonable.

18. When any enactment prescribes the period of limitation for initiation of proceedings, the period of limitation is to inform the people that after lapse of certain time from certain events proceedings will not be entertained and it can hardly be said that by prescribing limitation, the legislatures' act arbitrarily or disregard the principles of fair play and natural justice. The Statutes of limitation are regarded as procedural and the law of limitation applies to all equally. The object of Statutes of limitation is not to create any right but to prescribe periods within which the legal proceedings may be instituted for enforcement of rights which exist under the substantive law. After expiry of period of limitation, the right to institute legal proceedings comes to an end. An enactment prescribing period of limitation expects the litigants to be vigilant in enforcing their rights within the time

prescribed. If the litigant is not vigilant and does not institute legal proceeding within the time prescribed, he may loose remedy and suffer hardships, but that can never be regarded as sufficient to consider an enactment prescribing the period of limitation as arbitrary.

19. One of the considerations on which the doctrine of limitation and prescription is based upon is that there is presumption that a right not exercised for a long time is not existent. The object of the Law of Limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or latches. The object of Law of Limitation is in accordance with the maxim “interest reipublicae ut sit finis litum” i.e. the interest of the State requires that there should be an end to litigation. Statutes of limitation and prescription are statutes of peace and repose. Rule of vigilance which is foundation of statute of limitation rests on principles of public policy. The purpose of limitation is to induce the claimants to

be prompt in claiming relief. The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. The period of limitation fixes the life span of a legal remedy for the redress of legal remedy. Viewed in light of these principles, the limitation prescribed by Section 18 (2) of the Act can hardly be regarded as violative of fundamental rights guaranteed to the claimants under Articles 14, 21 and 300-A of the Constitution because it has rational relation to the object sought to be achieved by the statute.

20. In view of above discussion, it is difficult for this Court to agree with the submissions made by the learned counsel for the petitioners that the provisions of Section 18 (2) of the Act are violative of fundamental rights of the petitioners guaranteed

under Articles 14, 21 and 300-A of the Constitution. The plea that special provision prescribing shorter period of limitation under Section 18 (2) of the Act than one provided under the Limitation Act, would render the provisions of Section 18 (2) of the Act violative of Articles 14, 19 (1) (f) of the Constitution cannot be upheld.

21. In V.M. Salgaocar and Bros. V. Board of Trustees of Port of Mormugao and Another, (2005) 4 Supreme Court Cases 613,, the appellant who was engaged in exporting iron ore was allotted one such plot at Mormugao port by the Board of Trustees of Mormugao Port. Rates were prescribed per tonne of iron ore, handled through mechanised ore handling plan and revised from time to time. By a notification the Board increased the handling rate to Rs.28.22 per tonne and fixed minimum rental surcharge of Rs.8.80 per tonne. That surcharge was to be reduced in proportion to the tonnage exported by the exporters. The appellant challenged surcharge of Rs.8.80 per tonne as illegal without jurisdiction and null and void, by filing a suit.

22. Section 120 of the Major Port Trusts Act, 1963 reads as under :

"120. Limitation of proceedings in respect of things done under the Act – No suit or other proceeding shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action."

23. It was argued before the Supreme Court that shorter period of limitation of six months prescribed under Section 120 was unconstitutional and violative of Articles 14 and 19 of the Constitution as it singled out cases under the Act without intelligible differentia. It was urged that it had no nexus with the objective sought to be achieved under Section 120 of the Act. It was further argued that in respect of suits against Government

and public officers under other laws, longer period of limitation has been prescribed and there was no reason whatsoever to prescribe shorter period of limitation under Section 120 of the Act., as a result of which the provisions of Section 120 of the Act should be regarded as unconstitutional. It was contended that there are three divisions of the Schedule to the Limitation Act. The first division concerns itself with suits where the minimum period in column of limitation is one year going upto 30 years, whereas in the second division, which deals with appeals, much shorter period of limitation is provided ranging from 30 days to 90 days and in the third division relating to filing of applications, again a very short period of limitation is prescribed ranging from 10 days to 90 days and as Section 120 which provides for short period of limitation of six months for filing of the suit without prescribing for the condonation of delay to mitigate the hardship of the litigants, it should be regarded as arbitrary, excessive disproportionate and unreasonable restriction on the appellant's rights under Articles 14 and 19 (1) (f) of the

Constitution. Negativing the above mentioned arguments, the Supreme Court has, inter-alia held as under :

> “ Para 30. Before the Bombay High Court in Municipal Corporation of Greater Mumbai's case (supra) the challenge had been laid to S. 527 of the Bombay Municipal Corporation Act on the ground that the same was illegal and ultra vires as it violated the fundamental rights guaranteed to plaintiff under Arts. 14 and 19(1)(f) of the Constitution of India. The learned counsel appearing for the plaintiff did not press the challenge to the constitutional validity of S. 527 but the Division Bench found that there was no merit in the contention raised by the plaintiff to the constitutional validity of S. 527 and observed that merely because a statute not dealing with limitation in general prescribed a special period of limitation different from the one in the Indian Limitation Act, it does not follow that the provision prescribed the special period of limitation

violates Art. 14 of the Constitution, much less Art. 19(1)(f) thereof. It was observed in paragraph 9 :- (AIR p. 353)

"Mr. Adik for the plaintiff did not press the constitutional point raised in the above paragraph of the plaint and obviously for good reasons. It is obvious that there is no substance in that contention. Merely because a statute not dealing with limitation in general prescribes a special period of limitation different from the one in the Limitation Act, it does not follow that the provision prescribing the special period of limitation violates Art. 14 of the Constitution, much less Art. 19(1)(f) thereof."

31. No doubt the learned counsel appearing for the plaintiff in that case had given up his challenge to the constitutional validity of S. 527 of the Bombay Municipal Act, but all the same the High Court recorded its reasons for upholding the validity of the section by

recording valid reasons which in our view are correct. We agree with the observations made by the Division Bench in the said case that merely because a statute not dealing with the limitation in general prescribed period of limitation different from the one in the Indian Limitation Act, 1963 it does not follow that the provisions prescribing the said period of limitation violates Art. 14 or 19(1)(f) of the Constitution of India.

32. In respect to the judgment of this Court in Trustees of the Port of Bombay' case (supra) it is urged by the learned senior counsel appearing for the appellant that the constitutional validity of S. 87 of the Bombay Port Trust Act, 1879 was not under challenge and, therefore, the said decision cannot be a precedent for examining the constitutional validity of S. 120 of the present Act. Section 87 reads as under :-

"Section 87. No suit or other proceeding shall be commenced against any person for any

thing done, or purporting to have been done, in pursuance of this Act, without giving to such person one month's previous notice in writing of the intended suit or other proceeding and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding."

33. It is true that the constitutional validity of S. 87 of the Act which is equivalent to S. 120 of the present Act and similar in terms was not directly in issue. Yet this Court examined the question of shorter period of limitation prescribed under S. 87 of the Bombay Port Trust Act, 1879. With reference to the relatively longer period of limitation provided under the Indian Limitation Act for filing of the suit and after examining the said issue the Court came to the conclusion that shorter period of limitation provided under S.87 of the Bombay Port Trust Act, 1879 was valid. It was observed in para 38 :- (SCC pp. 727-28)

"38. If the person entitled to the goods defaults in removing them within one month of the Board coming into custody, special powers of disposal by public auction are given by S. 64-A. The Act charges the port authorities with a wealth of functions and duties and necessarily legal proceedings follow upon the defects, defaults and other consequences of abuse of power. Even so, a public body undertaking work of the sort which a port carries out will be exposed to an explosive amount of litigation and the Board as well as its officers will be burdened by suits and prosecutions on top of the pressure of handling goods worth crores daily. Public bodies and officers will suffer irremediably in such vulnerable circumstances unless actions are brought when evidence is fresh and before delinquency fades; and so it makes sense to provide, as in many other cases of public institutions and servants, a reasonably short period of time within which the legal proceedings should be started. This is nothing unusual in the jurisprudence of India or

England and is constitutionally sound. Section 87 is illumined by the protective purpose which will be ill-served if the shield of a short limitation operates in cases of misfeasance and malfeasance, but not non-feasance. The object, stripped of legalese and viewed through the glasses of simple sense, is that remedial process against official action showing up as wrong doing or non-doing which inflicts injury on a citizen should not be delayed too long to obliterate the probative material for honest defence. The dichotomy between act and omission, however, logical or legal, has no relevance in this context. So the intendment of the statute certainly takes in its broad embrace all official action, positive and negative, which is the operative cause of the grievance. Although the Act in the present case uses only the expression 'act' and omits 'neglect' or 'default' or 'omission,' the meaning does not suffer and if other statutes have used all these words it is more the draftsman's anxiety to avoid taking risks in Court, not an addition to

the semantic scope of the word 'act.' Of course, this is the compulsion of the statutory context and it may well be that other enactments, dealing with different subject-matter, may exclude from an 'act' an 'omission.' This possibility is reduced a great deal by the definition of 'act' in the various General Clauses Acts, as included 'illegal omissions'."

34. The question of considering the rationale of S. 87 of Bombay Port Trust Act squarely arose in the said case as the contention was raised by the Additional Solicitor General therein that if the argument of the respondent in the said case was accepted, it would amount to misreading the purpose of S. 87 of the Bombay Port Trust Act and similar provision in many statutes calculated to protect public officers and institutions on a special basis. (see paragraph 7 of the judgment). The Major Port Trusts Act, 1963 charges the port authorities with a well thought out duties and functions in respect of providing port facilities and equipment and

providing services for receiving, landing and shipping of goods or passengers from and upon sea going vessels. As a result of these multifarious functions, major ports and their officers are faced and burdened with an explosive amount of litigation. The object of S. 120 is two-fold, i.e. provision of giving one month's notice setting out the cause of action is to give the port authorities an opportunity to consider the merits of the case of the aggrieved party land make amends when possible to save litigation. To ensure that legal action against port authorities and its officers is initiated expeditiously when evidence is fresh land does not obliterate the probative material for honest defence.

35. The classification has a reasonable nexus to the object, it seeks to achieve. The submission made on behalf of the appellant that though a suit may be filed within six months, the trial of the suit could take place long after this and that the evidence would never be fresh at that

stage is fallacious inasmuch as once the suit is filed against a party, the party is put on notice and will, therefore, gather the relevant documentary evidence when fresh and preserve such evidence for the trial whenever the same would take place.

36. The submission of Shri R. F. Nariman, learned senior counsel appearing for the appellant that in Indian Limitation Act, 1963 no provision for condonation of delay for institution of a suit has been made because a relatively longer periods of limitation has been provided as compared to limitation provided for appeals and other applications and, therefore, providing relatively shorter period of six months for filing the suit under the provisions of S. 120 of the Major Port Trusts Act, 1963 without a provision for condonation of delay, would make the section arbitrary, excessive, disproportionate and unreasonable restriction on the appellant's right under Arts. 14 and 19(1)(g) of the Constitution of India cannot be

accepted. The statute of limitation is founded on public policy that an unlimited and perpetual threat of litigation leads to disorder and confusion and creates insecurity and uncertainty. Therefore the legislature has sought to balance the public interest in providing limitation on the one hand and at the same time not to unreasonably restrict the right of a party to initiate proceedings on the other. Once a suit is filed the object of limitation as a statute repose is satisfied inasmuch as the opponent party knows what he has to defend. The Major Port Trusts Act, 1963 is a special Act. It is a settled legal proposition that the provision of the Special Act shall prevail over with the general Act. Section 29 of the Indian Limitation Act, 1963 relates to savings. For proper appreciation of legal position S. 29(2) of the Limitation Act is reproduced below :-

"Section 29(2).- Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period

prescribed by the Schedule, the provisions of S. 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Ss. 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

37. Sub-section (2) of S. 29 envisages special or local laws which can provide a period of limitation for suits as well as for appeals and applications, different from the period prescribed by the schedule of Limitation Act where provisions contained in Ss. 4 to 24 can be expressly excluded by such special or local laws. There are many special or local laws which provide for a short period of limitation for filing of appeals as well as applications and where the provisions of S. 5 are expressly excluded or curtailed. Under the Arbitration and

Conciliation Act, 1996, S. 34 prescribes time limit within which an application for setting aside of an award must be made and although the Court is given the power to extend the time on sufficient cause being shown, the said power to extend the time is restricted but a period of 30 days only and not thereafter.

38. It was then submitted by learned Senior Counsel for the appellant that whereas S. 120 of the Major Port Trusts Act prescribes a limitation for six months plus one month of statutory notice for suits filed against the Port Trust and its employees for anything done or purporting to have been done in pursuance of the Act, no limitation is prescribed for suits which are filed by the Port Trust under S. 131 of the same Act without a rational basis. We do not find any merit in this submission. It is well settled that although limitation being intended for quieting title and in that sense looks at the problems from the point of view of the defendant with a view to provide him

security against the stale claims, addresses itself at the same time also to the position of the plaintiff. The legislature in its wisdom can make separate provision within which a suit must be filed by the individual from that within which a suit can be filed by a statutory body. In Nav Ratanmal v. State of Rajasthan, a similar argument was raised and negatived by this Court. In that case the Court was examining as to whether there was a rational basis for treating the Government differently as regards period within which the suit could be filed by the Government on the one hand and the private individual on the other. It was held that there were sufficient grounds for differentiating between the claims of an individual and the claims of the Government and the actual period of limitation which should be allowed for filing the suit by any party was a matter of legislative policy and cannot be brought within the scope or purview under Art. 14 or any other article of the Constitution. It was observed :- (SCR p. 331)

"It is with this background that the question of the special provision contained in Art. 149 of the Act has to be viewed. First, we have the fact that in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of Governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued. Government being an impersonal body, before a claim is launched there has to be interdepartmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these

features which are sometimes characterised as red-tape that there is delay in the functioning of Government offices."

39. With reference to the contention of Shri R. F. Nariman, learned senior counsel appearing for the appellant that there is no reason for prescribing a shorter period of limitation for action against the Board while suits against the Government can be filed within normal period of limitation, it may be stated that the Government cannot be equated with statutory body like the Major Port Trust. The Government is a vast organisation having comparatively large manpower and in the litigation against the Government subject-matter of disputes is under several different Acts, such as Excise Act, Customs Act, Income-tax Act, Railways Act, Land Acquisition Act etc. Many of these Acts also contain provisions similar to, if not identical with the provisions of S. 120 of the Major Port Trusts Act, 1963. Therefore, the contention between a major port and Government as a whole is totally

fallacious.

40. A provision of the Act providing for a shorter period of limitation cannot be declared to be unconstitutional simply because in some of the Statutes a longer period of limitation has been prescribed for the redressal of the litigants grievances. The legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those covered by the Legislature are left out would not render the legislation of any law being discriminatory and violative of the fundamental rights guaranteed under Arts. 14 and 19(1)(g) of the Constitution."

24. Having regard to the above quoted observations made by the Supreme Court, this Court is of the opinion that merely because shorter period than one

prescribed under Article 100 of the Limitation Act, 1963 is prescribed under Section 18(2) of the Act, the provisions of Section 18 (2) of the Act cannot be regarded as violative of the provisions enshrined under Article 14, 19(1) (f) and 300-A of the Constitution.

5. On over all view of the matter, this Court is satisfied that the proviso to Section 18 (2) of the Act requiring the claimant to make application within the time prescribed therein is neither unreasonable nor arbitrary nor illegal nor violative of any of the provisions of the Constitution. Those provisions are intra-vires and therefore the petitioners are not entitled to the reliefs claimed in the petition.

26. The net result of the above discussion is that there is no substance in the petition and therefore, the petition is liable to be dismissed.

27. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to cost.

(J.M.Panchal,J.) (Bankim N. Mehta, J.)